

FIRST REGULAR SESSION

SENATE BILL NO. 397

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRAHAM.

Read 1st time February 22, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1669L.02I

AN ACT

To repeal sections 546.070, 650.056, and 650.057, RSMo, and to enact in lieu thereof fifteen new sections relating to the criminal justice system, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 546.070, 650.056, and 650.057, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 488.5022, 491.800, 491.803, 491.806, 491.809, 546.070, 590.700, 590.702, 650.056, 650.057, 650.500, 650.505, 650.507, 650.509, and 650.510, to read as follows:

488.5022. 1. A surcharge of five dollars shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, including an infraction; except that no such surcharge shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county, or municipality.

2. Of the five dollar surcharge collected pursuant to subsection 1 of this section, four dollars shall be deposited in the Missouri laboratory oversight committee revolving fund created in section 650.507, RSMo, and one dollar shall be deposited in the justice improvement fund created in section 650.509, RSMo.

491.800. 1. As used in sections 491.800 to 491.815, the following terms shall mean:

(1) "Electronic recording", a complete and authentic electronic recording created by motion picture, videotape, audiotape, or digital media;

(2) "Police facility", any physical structure, office detention center, or mobile structure under the operational control of law enforcement that has access to

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

electricity necessary to operate recording equipment where investigative interviews may be conducted.

2. Any interview conducted by a peace officer in a police facility of a person who may have witnessed a violation of section 565.020, 565.021, 565.023, or 565.024, RSMo, shall be electronically recorded.

3. Any interview conducted by a peace officer in a police facility with a person who is suspected of committing a violation of section 565.020, 565.021, 565.023, or 565.024, RSMo, shall be electronically recorded. Any admission made by a suspect to a peace officer prior to the commencement of electronic recording shall be repeated back to the suspect with the suspect's response electronically recorded.

4. An oral, written, or sign language statement of an individual, made pursuant to this section and section 491.803, which is obtained at a police facility shall be presumed inadmissible as evidence against a defendant in a criminal proceeding unless:

(1) The questioning is electronically recorded in its entirety;

(2) Prior to the statement, but during the recording, the accused is given the requisite Miranda warnings and knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) The recording device is capable of making an accurate recording, the operator is competent at using the equipment, and the recording has not been altered;

(4) All voices on the recording that are material to the questioning are identified; and

(5) No later than the twentieth day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings related to the charges made pursuant to this section.

5. When equipment is available, it is preferential that the electronic recording provides live-action video with simultaneous audio recording. The individual being questioned should appear in the video portion with the individual conducting the questioning in such a video.

6. (1) As used in this subsection, good cause means:

(a) The questioning took place in a location not identified in this section and where the requisite equipment is not readily available;

(b) The accused refused to have his or her interrogation electronically recorded; or

(c) Failure to electronically record an entire questioning was the result of

equipment failure and obtaining replacement equipment was not feasible.

(2) The state may rebut the presumption of inadmissibility through clear and convincing evidence that the statement was both voluntary and reliable and law enforcement officers had good cause not to tape the entire questioning.

7. Notwithstanding any other provision of law to the contrary, a written, oral, or sign language statement of an individual made pursuant to this section and section 491.803, which is the result of an interview or custodial interrogation, is admissible against the accused in a criminal proceeding if:

(1) The statement was obtained in another state and was obtained in compliance with the laws of that state or this state; or

(2) The statement was obtained by federal law enforcement officers in this state or another state and was obtained in compliance with the laws of the United States.

8. Every electronic recording of an individual made pursuant to this section and section 491.803 must be preserved by the appropriate law enforcement officials until such time as the defendant's conviction for any offense relating to the questioning is final and all direct and habeas corpus appeals are exhausted, or the prosecution is prohibited by law.

491.803. 1. Any interview or questioning relating to a felony conducted by a peace officer in a police facility with a person whom the peace officer reasonably believes has significant learning disabilities, so that he or she would be diagnosed as either being retarded or borderline retarded, or a person who is under twelve years of age, shall be electronically recorded.

2. If a peace officer has a reasonable belief that the person questioned has significant learning disabilities or the person is under twelve years of age, interrogation shall be by nonleading questions that do not unduly suggest the answer in the question.

491.806. 1. Any prosecutor obtaining the testimony of a witness that learned of an incriminating admission by a defendant while incarcerated and who is not a co-defendant on charges arising out of the same act or acts shall obtain a sworn affidavit at least seven days before the witness testifies at trial. The affidavit shall contain the following:

(1) A listing of the specific consideration offered to the witness by the state for the procurement of his or her testimony against the defendant;

(2) Any request by law enforcement about cooperating in an on going investigation prior to the witness in custody encounter with the defendant;

(3) A listing of previous criminal cases in which the witness has provided sworn testimony;

(4) A listing of previous criminal cases in which the witness has testified as a state's witness, and the consideration received for such testimony;

(5) Any media account of the charges pending against the defendant that the witness has read or observed; and

(6) Any prosecutor that obtains the above described affidavit shall verify that information with the registry described in subsection 2 of this section that the information contained in the affidavit is accurate prior to presenting the affidavit to the defendant.

2. The department of public safety shall establish a registry within MULES which monitors all persons testifying pursuant to this section. The prosecutor shall submit witness information, including a copy of the witness statement, to the department of public safety. The registry shall be an investigative database and shall not be a public record.

491.809. The law enforcement officer in charge of the principal investigating agency or his or her designee shall certify to the prosecutor filing felony charges a list of all existing items of evidence, including location, and a list of all witnesses' names, addresses, and phone numbers interviewed in relation to the charge. This certification to the prosecutor shall occur within ten days of presentment to the prosecutor of the police investigation and shall be updated every thirty days until the investigation is closed. The director of the department of public safety shall pursuant to this section and their rulemaking authority develop a standardized form for this certification and publish it on the department web site in a downloadable format.

546.070. 1. The jury being impaneled and sworn, the trial may proceed in the following order:

(1) The prosecuting attorney must state the case and offer the evidence in support of the prosecution;

(2) The defendant or his counsel may then state his defense and offer evidence in support thereof;

(3) The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original case;

(4) In every trial for a criminal offense the court shall instruct the jury in writing upon all questions of law arising in the case which are necessary for their information in giving the verdict, which instructions shall include a definition of the term reasonable doubt;

(5) Unless the case be submitted without argument, the counsel for the prosecution shall make the opening argument, the counsel for the defendant shall follow, and the counsel for the prosecution shall conclude the argument.

2. After July 1, 2006, significant violation of the eyewitness evidence protocol established pursuant to sections 590.700 and 590.702, RSMo, shall result in the finder of fact being instructed as to the risks of mistaken eyewitness identification. However, no violation of the eyewitness evidence protocol promulgated pursuant to sections 590.700 and 590.702, RSMo, rules shall provide the basis for the court to grant a motion to exclude any eyewitness identification.

3. The jury shall be instructed as to the reliability of eyewitness evidence identifications and/or the issues relating to cross-racial identifications, if used in the trial.

590.700. The director of the department of public safety shall provide a standardized eyewitness evidence form for use by law enforcement in all cases where an individual was observed but the identity is unknown by the witness at the time of the crime and no apprehension of the perpetrator occurred at the crime scene. This form shall be in compliance with the rules promulgated pursuant to this section and section 590.702.

590.702. 1. The director of the department of public safety pursuant to section 590.700 and this section and the director's rulemaking authority shall promulgate an eyewitness evidence protocol after consulting the United States Department of Justice: Eyewitness Evidence: A Guide for Law Enforcement (1999) and then incorporate the following recommendations in these specific areas:

(1) The witness shall be told prior to the line-up that the perpetrator of the crime might not be in the line-up or photo-spread;

(2) The witness shall be told that he or she shall not assume the person administering the line-up or photo-spread knows which person is the perpetrator;

(3) When possible, the person administering the line-up or photo-spread shall not know the identity of the suspect in the line-up or photo-spread;

(4) A dated and signed written witness statement of confidence will be obtained after the witness provides a description of the perpetrator or identifies a suspect as the perpetrator of the crime which confirms the witness' confidence in correctly identifying the perpetrator of the crime;

(5) Suspect confrontations, either by photo-spread or live line-up, shall be conducted in sequential order with the witness viewing only one suspect at a time and requested to make a decision whether or not the person viewed is or is not the perpetrator before viewing any additional members of the photo-spread or line-up;

(6) Only one suspect in any one photo-spread or line-up panel with at least four nonsuspect fillers; and

(7) Photographic or electronic documentation of the entire photo-spread or line-up procedure including panels used.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

650.056. Any evidence leading to a conviction of a felony [described in subsection 1 of section 650.055] which has been or can be tested for DNA shall be preserved by the Missouri state highway patrol **or at the Missouri crime lab where the test was conducted or such other central repository authorized by the oversight committee for this purpose.**

650.057. 1. Except as provided in subsection 3 of this section, no local law enforcement agency may establish or operate a system [before January 15, 1992, and] unless:

(1) The equipment of the local system is compatible with that of the state system; and
(2) The local system is equipped to receive and answer inquiries from the Missouri DNA profiling system or FBI databank and transmit data to the Missouri DNA profiling system and FBI databank; [and]

(3) The procedure and rules for the collection, analysis, storage, expungement and use of DNA profiling [data do not conflict with procedures and rules applicable to the Missouri] system and the FBI DNA databank[.];

(4) The local system is accredited by a nonprofit association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

(5) The local system undergoes external audits, not less than once every two years, that demonstrate compliance with crime laboratory standards and protocols established by the Director of the Federal Bureau of Investigation.

2. The Missouri department of public safety shall adopt rules to implement this section.

3. Nothing in subdivisions (1) and (2) of this section shall prohibit a local law enforcement agency from performing DNA profiling analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court. Implementation of sections 650.050 to 650.057 shall be subject to future appropriations except for section 650.050.

650.500. 1. The governor shall appoint a seven-member "Laboratory Oversight Committee" to provide independent review of state crime laboratory

operations to six-year terms.

2. As used in this section "Missouri crime lab" means any forensic testing facility used by the state of Missouri, or its subdivisions, to conduct tests of material and then offer an opinion as to the results of those tests in a criminal prosecution.

3. This section complies with the requirements of H.R. 5107, "The Justice for All Act of 2004" signed into law by President Bush on October 30, 2004, as independent crime lab oversight.

4. The committee shall include one scientist trained in laboratory operations, one health care professional, one law enforcement officer, one defense attorney, one scientist knowledgeable in DNA forensic testing, one scientist knowledgeable in nonDNA forensic testing, and one at-large member. It shall take a majority of the appointed members to conduct business. Meetings shall be conducted in accordance with chapter 610, RSMo.

5. Every Missouri crime lab shall be accredited by a reputable and independent scientific organization, and that such accreditation shall be for each type of forensic test that they conduct at that lab which relates to criminal prosecutions.

6. The committee shall have the power, whenever substantive allegations of misconduct and/or incompetence have been made against any Missouri crime lab to:

(1) Issue public reprimands to laboratories and/or to individual personnel that have violated good scientific procedures as adopted by the applicable accrediting organization;

(2) Sanction a laboratory having multiple violations of good scientific procedure; and

(3) Administer oaths, subpoena witnesses, issue subpoenas duces tecum, and require production of documents and records. Subpoenas, including subpoenas duces tecum, shall be served by a person authorized to serve subpoenas of courts of record. In lieu of requiring attendance of a person to produce original documents in response to a subpoena duces tecum, the committee may require sworn copies of such documents to be filed with it or delivered to its designated representative;

(4) Submit material covertly to a Missouri crime lab for testing;

(5) At every Missouri crime lab a placard shall be displayed providing contact information to the oversight committee, in addition to a summary of the provisions of section 650.500 to 650.507. The placard shall be prepared and paid for by the oversight committee;

(6) To seek equitable relief in a circuit court, to ensure that every Missouri crime lab in Missouri is in compliance with the federal DNA Identification Act of 1994, 42 U.S.C. 14132(b)(2), and any subsequent crime laboratory standards and protocols established by the Director of the Federal Bureau of Investigation.

650.505. 1. Every lab report shall be signed by the individual that conducted the test or tests described therein. Every report shall also contain a listing of any outside agencies which have currently accredited the lab, or if none, the report shall so indicate. Every report shall also certify if the testing was performed in accordance with the national or association standards.

2. It shall be a class B felony for any public employee or lab personnel to knowingly alter, offer, or verify falsified laboratory test results and/or to alter the material to be submitted for analysis for the purpose of changing the test results and/or to take material submitted for testing for their personal use.

650.507. 1. There is hereby created in the state treasury the "Missouri Laboratory Oversight Committee Revolving Fund", which shall consist of a portion of the moneys collected pursuant to section 488.5022, RSMo. Such fund shall be administered by the committee to reimburse local government entities for compliance with sections 650.056, 650.057, 650.505, and 650.510 and as the committee may further direct.

2. One-half of all moneys in the Missouri laboratory oversight committee revolving fund shall be directed to conduct the DNA testing of currently incarcerated individuals and to improve the DNA database as the committee may direct. One-quarter of moneys collected under this fund shall be used for accreditation testing and auditing of crime laboratory facilities in Missouri and for such other related expenditures as the committee may authorize. The remaining one-quarter of moneys collected under this fund shall be used by the laboratory oversight committee to obtain new equipment and to provide training for Missouri crime laboratory personnel.

3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

4. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

650.509. 1. There is hereby created in the state treasury the "Justice Improvement Fund", which shall consist of a portion of the moneys collected pursuant to section 488.5022, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of this section.

2. Such fund will be administered by the director of the department of public safety to reimburse local law enforcement agencies for necessary expenses accrued to comply with sections 491.800, 491.803, 491.806, and 491.809, RSMo, and sections 650.056, 650.505, and 650.510, or to provide training scholarships as provided for in subsection 3 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

3. If the fund balance exceeds more than thirty thousand dollars, the director may use the money from the fund in excess of thirty thousand dollars to provide scholarships to law enforcement officers and candidates where their law enforcement department requires them to personally incur the cost of law enforcement training. Such training shall include that which is required in accordance with sections 590.100 to 590.180, RSMo, or other training approved by the police officer standards and training commission. Each law enforcement officer or candidate who is granted scholarship money from this fund must commit to a minimum of four years of employment in law enforcement upon the completion of the training for which the scholarship was granted. If the individual chooses to leave the law enforcement profession before the end of the requisite four years of employment following the completion of training, he or she must reimburse the fund for the scholarship money awarded on a prorate basis for each month he or she is not employed in law enforcement that is less than the required forty-eight months.

4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

5. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

650.510. Every Missouri crime laboratory shall keep the following records for a period of at least twelve years:

- (1) Documentation of testing methodology;
- (2) Documents relating to quality assurance;

- (3) Internal auditing procedure records;
- (4) Proficiency testing and scores of laboratory technicians;
- (5) Technical reviews of laboratory work product;
- (6) Instrument maintenance and calibration records;
- (7) Testing procedure protocols;
- (8) Technician lab notes sorted by report;
- (9) Periodic collateral testing of results; and
- (10) Written external auditing procedures.

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